

REMARKS

Claims 1-63 are pending. Claims 1, 47 and 63 are amended herein. The amendments add no new matter.

Amendments to the Specification:

The Office Action stated that the title of the application is not descriptive, noting that “while the current title includes ‘apparatus’, all the pending claims are drawn to a method. Applicants have amended the title herein to remove reference to “apparatus.” The amendment adds no new matter.

The Office Action also stated that the abstract “should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art,” and that the abstract should include, “if a process, the steps.”

Applicant would not agree that the Abstract refers to purported merits or speculative applications of the invention, nor does it compare the invention with the prior art. The abstract is amended herein to add steps of a method as disclosed. The amendment adds no new matter.

Rejections under 35 U.S.C. §112, Second Paragraph:

Claims 1-34 are rejected under 35 U.S.C. §112, second paragraph, the Office Action stating: “independent claim 1 lacks typical transitional language suitable for method claims, such as ‘comprising’. Thus, the scope of the claims cannot be determined.” Applicant respectfully disagrees.

Claim 1 is amended herein to recite, in relevant part, “A method of analyzing a nucleic acid amplification, the method comprising:...” Applicant submits that the amendment is sufficient to overcome the §112 rejection.

Claim 47 is rejected under 35 U.S.C. §112, second paragraph “because although it would appear that the three recited amplification methods are intended to be used in the alternative (or), they are recited as inclusive (and).” Claim 47 is amended herein to recite “wherein said nucleic

acid amplification regimen comprises ligase-mediated amplification, NASBA, or rolling circle amplification.” The amendment is believed to be sufficient to overcome the §112 rejection.

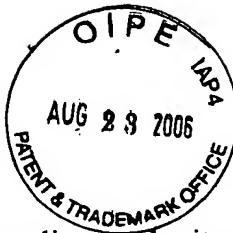
Claim 63 is rejected because “although the preamble and final step refer to a ‘transcription profile,’ there is nothing in the other active steps relating to such a profile.” Applicant respectfully disagrees. Nonetheless, claim 63 is amended herein to recite, after the step of “determining the quantity of separated nucleic acid in said aliquot,” the language “whereby a profile of transcripts in a nucleic acid sample which correspond to respective ones of said plural separated species is determined.” Applicant respectfully requests the reconsideration of the §112 rejection.

The amendments add no new matter. In view of the above, all §112 issues raised in the Office Action are addressed. Reconsideration and withdrawal of the rejections is respectfully requested.

Obviousness-Type Double Patenting:

Claims 1-63 are provisionally rejected on the ground of obviousness-type double patenting relative to claims 1-51 of copending application No. 10/387,286.

Applicant notes that commonly owned application No. 10/387,286 has recently issued as U.S. Patent No. 7,081,339. While applicant respectfully disagrees with regard to the obviousness-type double patenting rejection, the rejection is mooted by the accompanying terminal disclaimer over the term of that patent.



In view of the above, Applicant submits that all issues raised in the Office Action have been addressed. Reconsideration of the claims is respectfully requested.

Respectfully submitted,

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